

2020 DOMESTIC VIOLENCE VIRTUAL CONFERENCE

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Recanting & Reluctant Witnesses

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Domestic Violence Scenario

Barbara and Michael have been married for 10 years and have three children. Barbara works part time as a customer service representative for the local cable company. Michael runs his own business. As time has passed, Michael has become abusive and controlling. He has hit Barbara in the past, but she never reported it. She told her neighbor, Mrs. Turner, on several occasions that she loves her husband, but when he is angry, she and the kids are terrified of him hurting them.

One day, seven years into their marriage, Michael becomes enraged because Barbara is late coming home from work with the kids. As she walks into the kitchen, Michael grabs her, slings her around the kitchen, knocking items off the countertop. He punches Barbara in the head and stomach, causing her to be bruised and dizzy, and then leaves the house. Their next-door neighbor, Mrs. Turner hears the commotion and Barbara yelling, "Michael stop it, you're hurting me!"

Barbara, feeling angry and afraid, calls 911 for help. She tells the operator that her husband Michael hit her in the head and stomach with his fists, and that she is afraid. She tells them that her head and stomach hurt and that she needs medical attention. She gives her address and a physical description of Michael.

Officer Jones arrives and begins his investigation. He leads Barbara to be examined by the EMT's, and then photographs her injuries and the room. He asks Barbara for a picture of Michael and collects a piece of mail addressed to him. He also takes statements from the neighbors and children. He completes his investigation and charges Michael with hitting Barbara. Barbara also tells the EMT how she got injured. Because of her stomach pain, Barbara is transported to the emergency room to be checked out by a doctor. She tells the doctor about the assault so that he can understand how she got hurt and how she should be treated.

Michael is arrested and taken to jail. Michael calls Barbara from jail, apologizing and promises to never hurt her again. He tells her that she is the only one who can save him from himself. After the initial bond hearing, the court orders

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Michael to stay away from Barbara. The case comes up in court some three months later. During that time, Barbara experiences financial difficulties, as her part-time salary is not sufficient to cover all of her expenses. The children miss their father and she feels guilty for calling the police. Her relatives believe that she is breaking up the family and blames her for their problems. Michael calls Barbara to apologize and promises to never hurt her again. He is also concerned that if he is convicted of a crime, it will affect his ability to keep his sanitation business licensing. He pressures Barbara to change her story and deny that he hit her in order to protect him. Michael promises Barbara that if she does not testify against him, he will give her everything she ever wanted and be the husband that she wants him to be. Because she still loves him and is not confident in her ability to support her family on her own, Barbara believes him and thinks about reconciling with Michael.

Scenario 1

At a pretrial interview with the prosecutor and victim's advocate, Barbara tells them that nothing happened, and that it was all her fault. Thinking that she is just nervous about testifying, the prosecutor decides to go forward with the prosecution of Michael, without telling his defense attorney that Barbara changed her story. On the date of the trial, Barbara is called to the witness stand and claims to not remember anything about the assault. When the prosecutor attempts to ask her detailed questions, she refuses to answer.

1. How should you handle this?
2. Can you use any other means of admitting her testimony
3. How can you use Barbara's behavior on the stand to show what role domestic violence dynamics play in this relationship?

Scenario 2

At a pretrial interview with the prosecutor and victim's advocate, Barbara is withdrawn and nervous. Throughout the interview, she makes very little eye

contact, speaks almost too softly to hear and is visibly shaking. Each time Michael's name or testifying against him is mentioned, Barbara tenses up and expresses her fear of Michael and concern for her children. Eventually, Barbara shares with the prosecutor and the advocate the events that happened the evening Michael was arrested and other incidents of physical and mental abuse. She tells the prosecutor that she doesn't want to live like that anymore, but she is afraid if she testifies against Michael, she may not live at all. She wants to be strong for her children but is truly terrified.

Questions:

- 1) What can a police officer do to help this Barbara stay engaged?
- 2) What can a victims' advocate do to assist this victim?
- 3) What should the prosecutor do before and during court to help Barbara?

Scenario 3

Barbara attends the pretrial conference and tells the prosecutor and advocate she is concerned about paying her bills, keeping her children from their father and causing Michael to lose his job and livelihood. She is noncommittal about testifying. Before leaving the pretrial interview, Barbara confirms the date, time and location for the trial date. She shows up to court on the day of trial and sits behind the defendant. When the victim advocate approaches Barbara to offer support, Barbara says "Michael is my husband and I will not testify against him. In fact, I will be testifying on his behalf."

Questions:

- 1) What do you do??

Questions

1. What evidence should be collected by law enforcement to corroborate what happened?
2. How can a police officer help this victim stay engaged?

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3. What can a victims' advocate do for this victim?
4. What bond conditions should a prosecutor ask the court for in these circumstances?
5. How should a prosecutor address Barbara's refusal to testify?
 - a. What evidence is admissible?
 - b. What is the procedure for admitting it?
 - c. Can any of these issues be resolved prior to trial?
 - d. Are there any ethical issues to be considered?

SAMPLE QUESTIONS OF RECANTING VICTIM

**These questions are by Herb Tanner, Jr.
Violence Against Women Project Training Attorney
Prosecuting Attorneys Association of Michigan**

❖ Living Arrangements

- The man seated at the table in front of you is your husband, boyfriend, and/or father of your child?
- Currently, you are married and/or living with defendant?
- How long have you been married and/or living together?
- Have children? How many? Ages? Is defendant the father?
- At the time of the incident, were you married to or living with defendant?
- Since the incident, have you continuously lived with defendant?
- Any separations? What about right after the incident?
- How did you get to court today?
- Are the people sitting in the hallway outside with you defendant's relatives/friends?
- Did you all come to court together? Including defendant?
- How will you get home from court today?

❖ **Financial Dependence**

- Are you currently working outside the home?
- Have you ever worked outside the home since you have been with defendant?
If so, did he ask you to quit work and stay home?
- Is defendant currently working?
- Does he make more money than you do?
- Are you worried that he might lose his job if he is convicted?
- Are you renting? Do you have a mortgage payment?
- Who's responsible for paying the rent/mortgage?
- Do you rely on defendant for rent, groceries, utilities, bills?
- Rely on defendant to help around the house? With kids?
- Does defendant's family help you take care of the kids? Provide any financial support?

❖ **Prior History of Violence**

- This wasn't the first time defendant frightened you, was it?
- This wasn't the first time defendant threatened you, or scared you, was it?
- This wasn't the first time defendant was violent with you, was it?
- This wasn't the first time defendant injured you, was it?
- You told Officer that defendant had been violent with you/scared you/threatened you at least __times prior to this incident, didn't you?
- You also told the 911 operator/prosecutor's office that he had been violent with you before, didn't you?
- When was the first time he was violent with you/scared you/threatened you?
What happened?

NOTE: Prepare to impeach victim with police reports, 911 calls and/or statements of prior violent incidents.

- When was the next time he was violent with you?
- Did you stay with him even after he had been violent? Why?

- Did you call the police? Why not?
- Did he apologize to you?
- Did he tell you it was your fault he hit you because you made him upset/angry?
- Were you afraid you would not be able to support yourself or your children if you left him? Or if he was arrested?
- Did he promise it would never happen again? But it did?

❖ **The Charged Incident**

- In this case, you had an argument with defendant on ____.
- You were the only two people in the house?
- Kids there?
- Where in the house were the kid(s)?
- Same room?
- They could see you?
- They hear you?
- The argument was about ____ right?
- He was mad?
- He raised his voice?
- He scared you?
- Defendant caused those marks, right?
- You didn't have those marks before that date?
- Do you think he meant to hurt you when he touched/hit/pushed/kicked you?
- Have you talked to defendant about what happened on that day/night?
- Has he apologized to you for what he did? When?
- Did he call you from jail after he was arrested?
- Did he tell you he was sorry?
- Did he tell you he didn't mean to hurt you?
- Did he tell you it would never happen again?

If victim says “no” to above questions:

- So he told you he was not sorry?
- He told you he meant to hurt you?
- Threatened it would happen again?

Note: If victim left Defendant after incident, find out more.

- Did you leave Defendant after incident?
- Did you go to a shelter?
- Stay with friends? Relatives?
- Did you take your children with you?
- Did you leave because you were afraid?
- Why fearful? Prior incidents or subsequent incidents?
- Afraid he would be mad because he was arrested? Retaliate?
- Afraid he would take the kids away from you?

❖ **Physical Size Difference**

- How tall are you?
- You told the officer that you weighed only ____?
- How tall is the defendant?
- Approximately how much did he weigh on the day of the incident?
- So he is bigger than you are?
- And he is much stronger than you are? Even though he is smaller?

❖ **Status of Relationship with Defendant**

- You testified you are now back with defendant?
- But you initially left him?
- Separated for how long?
- You took him back?

- Did he intimidate you to come back?
- Harass you to come back?
- Promise you he would change?
- Was that before or after he learned of the pending criminal case?
- Defendant called you from jail? When? How many times?
- Was he angry at you?
- Tell you to drop charges?
- Tell you to get him out of jail?
- Tell you to say that you started the fight? You hit him first?
- Threaten you with what would happen to you if you didn't help him?
- As you testify today, are you saying defendant sat in jail for something you now say he did not really do?
- And he never called you from jail?
- He never got angry at you?
- He never told you to get the police or prosecutor to drop "false" charges against him?

❖ **Discussion of Pending Charges**

- When did you first learn this case was being prosecuted?
- When was the first time you talked about this case with defendant?
- When was the first time you talked about this case with his family/friends?
- Were they angry at you that defendant was in jail?
- When did you first talk to him about the case? While he was in jail?
- When he came home from jail?

- What did he say to you?
- Did he blame you? Apologize? Admit he was wrong?
- Did you come with him to court?
- Did you go with him to the defense attorney's office?
- Have you spoken with his attorney?
- Did he/she tell you what you should say in court?
- Did you speak with an investigator from the defense attorney's office? When?
- Did you call the Prosecutor's office?
- Receive information in the mail from the Prosecutor's office?
- Fill out any victim questionnaire?
- Did you show him the questionnaire?
- Did he help you fill it out?
- Did you show it to him before you filled it out?
- Did he tell you what to write?
- Did he try to remind you what happened?
- Did you show it to him after you filled it out?
- Did he approve it before you sent it to the Prosecutor's office?
- Are you trying to forget that this incident ever happened?
- Would you rather everyone left your personal relationship with him alone?
- Have you ever asked the Prosecutor's office to drop charges against him?
- You waited until you came to court weeks/months after the incident to tell anyone that you had lied/the police were wrong/you had started it?
- How many times since he was arrested have you talked about the case with him?

❖ **Attitudes and Feelings about Testifying**

- Were you reluctant to testify today?
- Why? Are you comfortable with the court process?
- Has he threatened or intimidated you in any way?
- Has his family or friends threatened or intimidated you?
- Did he tell you what to say today?
- Did you tell him what you were going to say today?
- Do you understand it is the Prosecutor's office, not you, that is prosecuting Defendant?
- Do you understand that you cannot make the decision to drop charges against Defendant when he has violated the Penal Code?
- Do you understand why?
- Are you nervous because he is sitting in this courtroom so close to you while you testify?
- Are you anxious that if you say the wrong thing, he might get mad at you when you get home tonight?
- Are you afraid of him now?
- Were you afraid of him then?
- Do you still love him?
- Want him to help raise the kids with you?
- You do want him to know you still love him, right?
- You don't want anything bad to happen to him?
- You do want him to stop hurting you?
- Do you want him to take responsibility for his actions?

SAMPLE IMPEACHMENT QUESTIONS OF VICTIM

Adapted from Gael Strack, Assistant City Attorney, San Diego City Attorney's Office, presented by the National District Attorney's Association.

1. You remember you called 911?
2. You called 911 because there was an emergency?
3. You called 911 because you wanted police officers to come?
4. In fact, you told the 911 operator: (*ask about the specific inconsistent statements*)
5. You were scared? upset? crying? hysterical?
6. Is that you on the tape?

It may become necessary to play the 911 tape to the victim if she denies or doesn't remember the call

7. Does listening to the tape help refresh your recollection?
8. So, you did call 911?
9. You know that 911 is for emergencies only, right?
10. You told the dispatch operator that defendant hit you?
11. You needed help?
12. You called immediately after defendant hit you, didn't you?
13. Where was defendant while you were on the phone with 911?
14. Could he see or hear you call the police?
15. You had to go to a neighbor's or payphone because you were scared?

16. You asked for police officers to come to your house?

Statements made to the police about the incident and injuries

17. Did officers arrive? How soon after you called 911?

18. In fact it was minutes after you called?

19. Did you tell the officers the truth about what had happened?

20. While you spoke to the officers, defendant was already gone/in another room/with other police officers?

21. You complained of pain to your -?

22. You were also injured?

23. You showed the officers your injuries?

24. You had just received that injury from defendant?

25. The police officer took photographs?

26. Do these photos marked as People's Exhibit # -show those injuries?

27. Do you remember telling Officer : _____.

28. So your testimony now is that you don't remember?

29. Or that you never said that and the officer made a mistake in his report?

30. Or that you lied to the officer?

If the victim says she lied at the time of the report, explore why

31. You never told the officer that you started the fight?

32. Or that you hit defendant first?

33. You never told the police not to arrest him that day?

34. You never told them that they had the wrong person in handcuffs?
35. You wanted defendant arrested so he would not hurt you anymore, didn't you?
36. You told the officers where they could find defendant to arrest him?

In ideal situations, a follow up interview is done during which you would gain more information useful for impeachment. These questions assume that you have information from that follow up interview.

37. You spoke with a detective one/two days after the incident?
38. You told him/her what had happened?
39. You told him/her about your injuries?
40. Do you remember telling the detective: *ask about the specific inconsistent statements.*
41. And that was while defendant was still in jail? You never told him/her that you started the physical fight?
42. Or that you lied to the 911 operator and police officers?
43. You did not ask the detective to get Defendant out of jail?
44. Or not to file criminal charges? You never called the police officers to tell them you had lied?
45. Even though you knew Defendant had been arrested? And criminal charges were pending?
46. Even though Defendant had already been sitting in jail for days?

